

REMARKS/ARGUMENTS

The amendment to Claim 15 is supported at specification page 3, lines 2-3 and 6-10. New Claims 24-27 repeat the limitations of Claims 16-18 and 20 but are dependent on Claim 12. Claim 28 is supported by Claim 15. No new matter has been entered.

The present invention relates to a method wherein an acaricidal aqueous solution comprising sodium bicarbonate and no other neurotoxic acaricidal substance is applied to, e.g., a rug or carpet in need of treatment for acarids. In the invention method water is evaporated from the solution such that the sodium bicarbonate crystallizes in a form of acaricidally active grains that adhere to the outer surface of the acarid. This claim is rejected over a combination of seven references which, together, allegedly suggest Applicants' invention.

Einzig, perhaps the closest reference to the previously pending claims, relates to a slurry containing micron-sized bicarbonate particles. Of course, a slurry is not a solution. Realizing this, the Examiner points to paragraph [0018] of the reference where it is disclosed that, upon dilution, the reference slurry can be characterized by a "saturation concentration" presumably of the bicarbonate of about 8.5%. The Examiner also notes that in Claim 23 of Einzig a pesticidal product comprising the slurry is disclosed.

Importantly, and contrary to the Examiner's suggestion, Einzig does not suggest that the bicarbonate is pesticidally active, and certainly does nothing at all with the disclosed dilutions, suggesting absolutely no use for these materials. There is no other reference that suggests that sodium bicarbonate is useful as an acaricidal substance, or suggesting that a solution of sodium bicarbonate could be dried so as to provide acaricidally active grains that adhere to the outer surface of an acarid.

For example, Vrba relates to an insecticide containing pyrogenically produced hydrophobic silica. This silica can be sprayed as an aqueous dispersion but, of course, the

silica particles do not dissolve in water and do not form a solution. Guerassimoff is similar in disclosing a pesticide composition containing finely ground amorphous silica. Again, silica does not dissolve, and thus does not form a solution, in water. Simpson sprays bicarbonate solution on the backing material of a carpet to maximize deodorancy (column 2, lines 55-56). Howari is cited for the proposition that aqueous solutions of sodium bicarbonate will form crystals when dried. Potter discloses problems caused by chiggers. Finally, Hart relates to the life cycle and reproduction of house-dust mites.

Claim 15 has been amended such that it now requires applying an acaricidal aqueous solution comprising at least 10 g/l of sodium bicarbonate to an element of the human environment in need of treatment for acarids, and evaporating the water from the acaricidal aqueous solution such that the sodium bicarbonate crystallizes in the form of acaricidally active grains that adhere to the outer surface of an acarid. This “in need thereof” language was held, in *Jansen v. Rexall Sundown Inc.*, 68 U.S.P.Q.2d 1154 (Fed. Cir. 2003) to require the specific intent to achieve the claimed objective (i.e., treatment for acarids). Specifically, the Federal Circuit stated that:

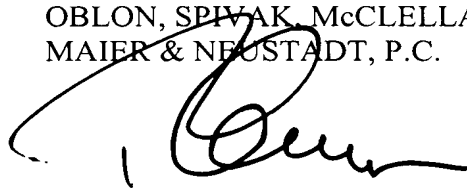
. . . the claim preamble sets forth the objective of the method, and the body of the claim directs that the method be performed on someone ‘in need.’ In both cases, the claims’ recitation of a patient or a human ‘in need’ gives life and meaning to preambles. [Citation omitted]. The preamble is therefore not merely a statement of effect that may or may not be desired or appreciated. Rather, **it is a statement of the intentional purpose for which the method must be performed.** We need not decide whether we would reach the same conclusion if either of the ‘treating or preventing’ phrase or the ‘to a human in need thereof’ phrase was not a part of the claim; **together, however, they compel the claim construction arrived at by both the district court and this court.**

*Jansen* at 1158 (emphasis added).

Thus, according to the Federal Circuit, claims directed to methods of treatment to be performed on those persons or things “in need of” such treatment require the specific intent to effect such treatment. Given this, nothing in even the combination of art cited herein could render the presently claimed method obvious, as no reference recognizes the ability of a sodium bicarbonate solution to be used to treat acarids. The closest use is disclosed in Simpson, who sprays bicarbonate solution on the backing material of a carpet not to treat acarids but to maximize deodorancy (column 2, lines 55-56). This use in no way discloses or suggests the present use of treating acarids, and as such the rejection should be reconsidered and withdrawn.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



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Richard L. Treanor  
Attorney of Record  
Registration No. 36,379

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 08/07)